

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

The Honorable Anne R. Morton
Mayor of Honeoye Falls
27 York Street
Honeoye Falls, NY 14472

Dear Mayor Morton:

I am writing to express the Agency's appreciation for the Local Government Advisory Committee's (LGAC) recommendations concerning the Environmental Protection Agency's (EPA) implementation guidance for the Federalism Executive Order (EO 13132). We also would like to **acknowledge** the Outreach Subcommittee and the Small Community Advisory Subcommittee for their work in preparing the recommendations for the LGAC.

First, **thank** you for your supportive words concerning the Agency's implementation of the Executive Order. EPA is committed to building and improving partnerships with local **governments** and EO 13132 strengthens our continuing efforts to obtain local government input on our regulations and policies early and often during their development. Your comments have helped us to improve the Agency's internal guidance for implementing the Executive Order.

EPA will complete work on the guidance this month and we appreciate your recommendations and **thoughtful comments**. These are most **helpful**. Fortunately, because the **Office** of Congressional and Intergovernmental Relations **and** the Office of Policy, Economics and Innovations have worked closely with members of the LGAC and SCAS throughout the guidance development process, most of your concerns and recommendations have been addressed during the development process. Nevertheless, we believe that it is important to respond directly to each of the themes that you have presented and these responses can be found in the enclosures included with this letter. As you requested, **we** responded separately to the LGAC and SCAS recommendations.

We look forward to working with you and the Committee members as we continue to refine our processes and gain experience with implementation of EO 13132.

Carol M. Browner

Enclosures

EPA Response to *Recommendations for EPA Implementation of Executive Order 13132 – Federalism*

Coordinated Intergovernmental Relations Approach

Executive Order 13132 (EO 13132) is one part of the Agency's overall design for intergovernmental relations. EPA sought to integrate the EO's provisions with other requirements and recommendations concerning the involvement of small communities in the regulatory process. These include the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the Regulatory Flexibility Act (RFA), the Unfunded Mandates Reform Act (UMRA), and your recent recommendations regarding the implementation of RFNSBREFA and UMRA. The goal is consultation with States, local governments and small communities that will make for better environmental regulations in a effective and efficient manner.

Role of Elected Officials

We appreciate that the question of who EPA consults with is a critical one. Our goal will be to consult with as broad a range of elected and non-elected local officials as is appropriate for any given policy or regulation. EPA recognizes the importance of consulting with elected representatives of State and local governments, as the Executive Order requires. We also appreciate that there may be non-elected officials with great knowledge and expertise on environmental policy or regulation and, as appropriate, we will reach out to these individuals as well.

National Associations

As expressly directed by the Office of Management and Budget, EPA will, as appropriate, consult with the national associations representing State and local governmental officials. These organizations are in the business of "knowing" their constituencies. In addition, they often have invested in developing a staff expertise in environmental policy and information. The Agency's goal is to tap into those resources so that we will write better regulations and make better environmental decisions. Again, consulting with national associations is but one aspect of the broader intergovernmental consultation process.

Small Community Consultation

As you know, RFNSBREFA and UMRA specifically require that in certain situations EPA must consult with small communities during the development of environmental regulations. We always seek to fully implement the small community provisions of these laws. Our efforts here include the development of internal guidance documents, and training for regulation development managers.

As you also know, EPA implemented in 1997 what it considers the most important of the Small Town Environmental Planning Task Force recommendations. This recommendation called for the establishment of a standing advisory panel focused on small community issues. In addition to its recommendations concerning EPA regulatory development process, SCAS, through the LGAC has provided the Agency with extensive comments on EPA's proposed national primary drinking water standard for arsenic. The Subcommittee has also considered EPA's combined animal feedlot operations strategy and the regulations associated with that strategy, and the recently promulgated total maximum daily load (TMDL) regulation.

EPA's aim with these two efforts is to ensure that environmental regulations are developed with an accurate understanding of the unique circumstances and implementation challenges facing small towns. The EO strengthens our efforts to involve small towns in EPA's decision-making efforts by improving the overall consultation practice.

Ambiguous Language

During the Agency's internal efforts to develop a credible implementation strategy for the EO, EPA carefully considered the use of terms such as "meaningful and timely involvement," "rule of reason," and "minimum level." The drafters attempted to strike a balance between the kind of "bright line" SCAS has suggested and the flexibility that regulation managers require in addressing the different circumstances that exist from regulation to regulation. We believe that with this guidance document we have struck the right balance. We also are aware, however, that implementing a more vigorous and comprehensive consultation effort as envisioned by the guidance document will be a work in progress. We look forward to the continued involvement of SCAS in our on-going evaluation of EPA's progress in consulting with State and local governments.

Other Issues and Language-Specific Concerns

A number of your specific comments can best be addressed with a clarification of OCIR's role in the development of Agency regulations. OCIR is a member of the Agency's Regulatory Steering Committee (RSC). The RSC, staffed by representatives from each program office, and managed by the Office of Policy, Economics and Innovation, essentially coordinates the development and issuance of regulations for the entire Agency. As a member of this Committee, OCIR has access to information and the opportunity to discuss and identify issues and concerns about regulations with State and local significance at all stages of the development process. Unresolved general policy issues are elevated by the RSC to the Regulatory Policy Council; the Associate Administrator for OCIR is on this "parent" committee. Unresolved regulation specific issues are elevated first to the responsible Assistant Administrator, and if necessary to the Administrator. The OCIR is a part of the Office of the Administrator. It is important to recognize that the roles and/or responsibilities identified for OCIR in the two Federalism guidance documents are ***in addition*** to these venues.

In addition to OCIR's role, individual SCAS members who are local officials can be involved by

program offices in various phases of regulatory development where there are state and local government interests, and SCAS as a subcommittee of the LGAC can identify their issues to the LGAC for action by that body. The guidance document ***"Planning for Intergovernmental Outreach and Consultation"*** clearly outlines for regulation writers venues and opportunities to fully engage both elected and non-elected officials of state and local governments in the developmental process. However, it must be understood that consultation is a two way process. We believe that it is important for State and local officials to identify early which regulations they are interested in, and when and how they want to be engaged..

Specific Responses:

Many of the specific comments provided in your recommendations pertain to issues in early versions of the two federalism guidance documents and have been addressed in the most recent versions. Additional, specific responses are provided below.

Small Community Definition: The current version of the guidance document ***"Interim Guidance on Executive Order 13132: Federalism"*** contains a revised introduction and Part I that explains the definitions and how EO 13132 and the requirements of SBREFA, UMRA, and RFA, come together.

Federalism Summary Impact Statement The ***"Interim Guidance on Executive Order 13132: Federalism"*** document now contains revised tables with expanded definitions of these categories. This guidance and its tables, as internal agency guidance, is designed to assist rule writers.

OCIR should be vigilant for "significant" post-proposal changes: Consultation in these guidances is now defined as an iterative process throughout rule making, with documentation of consultation activities.